

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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R&P SEAFOOD/SHELLFISH, INC. &
FOUR SEAS, INC.

Plaintiffs

v.

KENNEBUNK SAVINGS BANK,

Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASS

Case No. 05-cv-10420-MLW

DEFENDANT'S MOTION TO PERMIT REPLY MEMORANDUM

NOW COMES Defendant, Kennebunk Savings Bank, by and through its attorneys, Thompson & Bowie, LLP, and pursuant to Local Rule 7.1(B)(3) hereby moves for the allowance of a reply memorandum as follows.

Under the Local Rules a party may not submit a reply memorandum without leave of Court. *See L.R.D.Mass. 7.1(B)(3).* Defendant hereby moves for the allowance of a reply memorandum pursuant to that Rule and submits its reply herewith.

The pending motion is a motion to dismiss, or, for change of venue, challenging the personal jurisdiction of the Court over the Defendant, Kennebunk Savings Bank. As the Bank noted in its Motion, and as the Plaintiffs reiterated in their Objection, it is the Plaintiffs' burden to put on evidence establishing that the Court has jurisdiction. *See, e.g.,* Defendant's Motion (Docket Entry No. 4) at p. 5 ("It is the Plaintiffs' burden to persuade the Court that personal jurisdiction

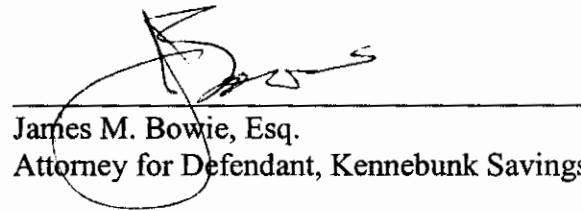
exists.”) (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Jet Wine & Spirits, Inc. v. Bacardi & Co. Ltd.*, 298 F.3d 1, 7 (1st Cir. 2002)); Plaintiffs’ Objection (not yet docketed—dated May 27, 2005) at p. 4 (“Plaintiffs acknowledge that, pursuant to the *prima facie* method employed by most courts, they have the burden of proving personal jurisdiction.”). Defendant respectfully asserts that given this framework regarding the presentation of evidence, it should be provided the opportunity to address Plaintiffs’ arguments. Although Defendant put the issue of jurisdiction at issue by submission of the Motion, it is Plaintiffs’ job to assert grounds for jurisdiction. Accordingly, Defendant should be provided the opportunity to respond.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Defendant prays that its motion be GRANTED and that the Court enter an Order allowing Defendant’s submission of a reply memorandum.

Dated at Portland, Maine this 31st day of May, 2005.


 Lisa F. Bendetson, Esq. (BBO#567069)
 Attorney for Defendant, Kennebunk Savings Bank

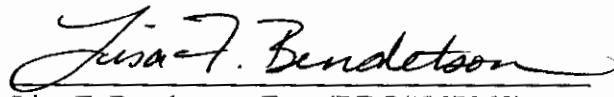

 James M. Bowie, Esq.
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CERTIFICATE OF SERVICE

I, Lisa F. Bendetson, attorney for Defendant, Kennebunk Savings Bank, hereby certify that I made service of the foregoing document titled: "Defendant's Motion to Permit Reply Memorandum" via depositing a true copy of same, on this date, in the U.S. Mail, postage pre-paid, to: Marc D. Kornitsky, Esq., Antico, Barrett, Burke & Kornitsky, LLP, One Essex Green Drive, Peabody, MA 01960.

Dated at Portland, Maine, this 31st day of May, 2005.


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